IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.19575 of 1999

Dated: 18-06-2007

Between:

Rudraraju Venkata Satya Surya Narayana Raju,
s/o Ramakrishnam Raju,
r/o Akiveedu,
West Godavari District.

... Petitioner

and

1. The Divisional Forest Officer,
   Wild Life Management,
   Eluru,
   West Godavari District and another.

... Respondents

ORDER:

This writ petition is filed seeking a *mandamus* to declare the action of respondents in seizing TATA HITACHI poclainer vehicle No.200 L.C.No.H.0-0078-0078 of petitioner under Wild Life Protection Act, 1972 (for short, 'the Act') and the Indian Forest Act, 1969, as illegal and arbitrary, and consequently direct respondents to release the said vehicle.

2. Petitioner states that he is the owner of TATA HITACHI poclainer and while the said vehicle was being used for repairing a canal in Penchukarmmu, Krishna District, second respondent – Deputy Range Officer without any authority came and seized the vehicle under the cover of a panchanama on 01-07-1999 and issued proceedings in Form – A of Andhra Pradesh Forest Offences (Compounding & Prosecution) Regulations, 1939 stating that the poclainer was being used for repairing of a canal in the Kolleru Wild Life Sanctuary and thus contravened Sections 27, 29 and 51 read with Section 39-D of the Act. The said proceedings as well as the seizure are questioned.

3. Despite the fact that respondents are served with the notices, they have not chosen to file any counter affidavits.

4. Heard learned counsel for the parties.

5. In fact, this Court had an occasion to deal with a case of this nature and observed that as far as existing tanks are concerned, they can be enjoyed as it is and the repairs were permitted in the existing tanks.
The said order passed by the learned Single Judge was reiterated in another batch of writ petitions, vide order dated 25-06-1999. Similarly another batch of writ petitions was also disposed of on 11-08-1999,

6. Having perused the papers and also the aforesaid judgments this court is of the view that the poclainer belonging to petitioner was in fact used only to repair the existing tanks, and therefore it cannot be said to be an offence under the Act. In the light of the said discussion, this Court is of the view that it cannot be said that petitioner has

committed an offence punishable under the Act. Accordingly, the seizure of the petitioner's poclainer is without jurisdiction.

7. Accordingly, the writ petition is allowed. No costs.

Having regard to the fact that this Court on 17-09-1999 while issuing *rule nisi,* in W.P.M.P.No.24515 of 1999 directed respondents to release the vehicle (poclainer) No.200 LC Excavator No.H0-0078-0078, to petitioner on his furnishing bank guarantee in a sum of Rs.2,00,000/- and now that the vehicle was released in favour of petitioner, the said bank guarantee furnished by petitioner shall be returned to him.

JUSTICE GOPALAKRISHNA TAMADA

Dt.18-06-2007
GLV